

## Message Text

CONFIDENTIAL

PAGE 01 BANGKO 09054 01 OF 02 041027Z

11

ACTION DLOS-07

INFO OCT-01 EA-11 NEA-14 IO-14 ISO-00 AF-10 ARA-16 EUR-25

RSC-01 COA-02 EB-11 OIC-04 CIAE-00 DODE-00 PM-07 H-03

INR-10 L-03 NSAE-00 NSC-07 PA-04 PRS-01 SP-03 SS-20

USIA-15 ACDA-19 AEC-11 CG-00 COME-00 DOTE-00 FMC-04

INT-08 JUSE-00 NSF-04 OMB-01 DRC-01 SCI-06 CEQ-02

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R 040911Z JUN 74

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 3855

INFO AMEMBASSY MANILA

AMEMBASSY NEW DELHI

USMISSION USUN NEW YORK

C O N F I D E N T I A L SECTION 1 OF 2 BANGKOK 9054

FROM LOS TEAM

MANILA FOR LOS TEAM

E.O. 11652: GDS

TAGS: PBOR

SUBJ: LOS - CONSULTATIONS IN INDIA

1. SUMMARY. DISCUSSIONS WITH GOI DISCLOSED AGREEMENT "AT THIS TIME" ON 12-MILE TERRITORIAL SEA, VAGUE BUT ENCOURAGING REMARKS ON STRAITS, AND POSSIBILITY OF GREATER CONFORMITY OF RESPECTIVE POSITIONS ON FISHERIES. SOME ENCOURAGING REMARKS MADE ON "SLIGHT DIFFERENCE" BETWEEN A LICENSE AND CONTRACT ON DEEP SEABEDS, AND SUPPORT GIVEN FOR HAVING DETAILED RULES AND REGULATIONS. GOI ADVOCATING NARROW CONTIGUOUS ZONE BEYOND TERRITORIAL SEA TO COMBAT SMUGGLING, AND INTENDS TO INSIST ON ARCHIPELAGO CONCEPT FOR ANDOMAN AND NICOBAR ISLANDS

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PAGE 02 BANGKO 09054 01 OF 02 041027Z

IF ARCHIPELAGO CONCEPT APPLICABLE TO INDONESIA IS RECOGNIZED.

SUGGESTIONS MADE BY JAGOTA FOR RESOLVING OBSTACLES TO NEGOTIATIONS. INDIANS SPENT MOST OF TIME ON NAVIGATION ISSUES, AND DISCUSSION OF OTHER ISSUES RELATIVELY BRIEF. END SUMMARY.

2. LOS TEAM AND EMBOFFS MET 31 MAY WITH GOI LOS REPS. GOI REPS WERE DR. S.P. JAGOTA, JOINT SECRETARY, LEGAL AND TREATIES DIV, MEA; COMMODORE FRANK FRAZER, NAVY HYDROLOGIST; MR. K.L. SHARMA, ASST LEGAL ADVISOR, LEGAL AND TREATIES DIV, MEA; MR. I.C. JAIN, LAW OFFICER, LEGAL AND TREATIES DIV, MEA; MR. BHATTACHARAYA, MINISTRY OF TRANSPORTATION; AND REP FROM MEA AMERICAN DESK. DR. JAGOTA AND COMMODORE FRANZER WERE ONLY ACTIVE PARTICIPANTS IN FORMAL DISCUSSIONS. IT APPEARS ALL OR MOST OF THE PARTICIPANTS WILL GO TO CARACAS, ALTHOUGH JUSTICE MINISTER WILL HEAD DELEGATION. DCM, POLLACK, AND OXMAN ALSO CALLED ON MEA SECRETARY (EAST) TRIVEDI.

3. TERRITORIAL SEA AND STRAITS. JAGOTA INDICATED AGREEMENT AT LEAST ON 12-MILE TERRITORIAL SEA, BUT SUGGESTED USG SHOULD NOT ALLUDE TO EXISTING BREADTH AS THREE ILES, AS THIS PRECIPITATES DEBATE AND IMPEDES NEGOTIATION. HE FURTHER OPINED THAT USG LINKAGE OF STRAITS OBJECTIVES TO AGREEMENT ON TERRITORIAL SEA BREADTH IS UNDERSTOOD BY MANY AS A PRECONDITION REQUIRING OTHER STATES TO MAKE BINDING COMMITMENT ON STRAITS WITH NO ASSURANCE OF AGREEMENT BY USG ON OTHER ISSUES. HE URGED SHIFT IN APPROACH TO SPEED NEGOTIATIONS, AND EXPRESSED BELIEF THAT WHEN RESOURCE ISSUES ARE RESOLVED, OTHER ISSUES WILL BE EASILY AGREED. NEED TO RESOLVE ISSUES IS PRESSING, AS AFRICANS ARE CHANGING POSITIONS AND "12-MILERS" ARE RAPIDLY BECOMING MINORITY. IF WIDE SUPPORT DEVELOPS FOR A 30-50 MILE TERRITORIAL SEA, GOI WOULD HAVE TO REEXAMINE ITS OWN POSITION. AS TO STRAITS, JAGOTA ASKED NUMEROUS QUESTIONS RELATING TO RIGHTS OF STRAITS STATES IN TIME OF HOSTILITIES AND COLLECTIVE RIGHT OF SELF DEFENSE. AFTER DISCUSSING VARIOUS IMPLIKATIONS, HE EXPRESSED VIEW THAT USG PROPOSAL IS REALLY FOR A PEACETIME REGIME, AND THAT IT MIGHT BE MORE ACCEPTABLE IF WE WOULD SPECIFY SUCH IN STATEMENTS AND TREATY. WHILE JAGOTA'S COMMENTS RE SPECIFICS OF ACCEPTABLE STRAITS REGIME WERE LIMITED TO NEED FOR BALANCING INTERESTS, COMMODORE FRAZER PRIVATELY INDICATED THAT HIS RECOMMENDATION IS TO WRITE INTERNATIONAL DUTIES OF BOTH TRANSITING VESSELS AND STRAITS STATES INTO STRAITS

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CONFIDENTIAL

PAGE 03 BANGKO 09054 01 OF 02 041027Z

ARTICLE. AS INDICATED SEPTTEL, JAGOTA'S TONE WAS POSITIVE BUT VAGUE.

4. ARCHIPELAGOS. JAGOTA FEELS THAT IF INDONESIA ACHIEVES ARCHIPELAGO STATUS, INDIA MUST HAVE SIMILAR STATUS FOR ANDOMAN AND NICOBAR ISLANDS. DETAILS REPORTED SEPTTEL.

5. AT LAST SEABEDS COMMITTEE MEETING, INDIA PROPOSED NARROW CON-

TIGUOUS ZONE BEYOND 12-MILE TERRITORIAL SEA IDENTICAL TO GENEVA CONVENTION CONTIUOUS ZONE. JAGOTA EXPLAINED THIS AS NEEDED TO COMBAT SERIOUS INDIAN SMUGGLING PROBLEM WITH BOATS ANCHORED JUST OUTSIDE 12 MILS. HE INTENDS TO PRESS CONCEPT AT CARACAS. HOT PURSUIT IS NOT ENOUGH. HE SEES ONLY ALTERNATIVE AS BEING A 30 MILE TERRITORIAL SEA. HE ARGUED THAT NARROW CONTIGUOUS ZONE IS BEST WAY TO AVOID BROADER TERRITORIAL SEA OR CREEPING JURISDICTION IN ECONOMIC ZONE (WHICH DOES NOT AND SHOULD NOT COVER SUCH MATTERS) AND TO ENSURE RESIDUAL RIGHTS RESIDE IN INTERNATIONAL COMMUNITY. WHEN WE NOTED UNSUCCESSFUL ATTEMPT IN 1958 TO ADD "SECURITY" TO "CUSTOMS, FISCAL, IMMIGRATION, AND SANITARY" REGULATIONS, AND DANGER THAT SUCH AN IDEA COULD BE SUCCESSFULLY REVIVED, JAGOTA SAID THIS COULD BE AVOIDED.

6. COASTAL RESOURCE JURISDICTION. JAGOTA NOT DEFINITIVE ON COASTAL RESOURCES, BUT SENSED A TREND TOWARD SEABED JURISDICTION TO EDGE OF MARGIN, WITH LIVING RESOURCE JURISDICTION LIMITED TO 200 MILES, AND REGIONAL CONSERVATION MEASURES FOR RESIDENT SPECIES BEYOND. THERE WAS NO PRECISE RESPONSE TO OUR PRESENTATION ON SEABED STANDARDS. WITH RESPECT TO FISHERIES, HE IMPLIED POSSIBLE AGREEMENT WITH USG POSITION ON FULL UTILIZATION OBLIGATION ON COASTAL STATE IF THERE IS CORRESPONDING DUTY ON FLAG STATES TO ASSIST IN DEVELOPMENT OF COASTAL STATE FISHING INDUSTRY. IN ELABORATE CRITICISM OF U.S. CONCEPT OF FULL UTILIZATION, HE SAID IT WOULD NOT STIMULATE FOREIGN INVESTMENT IN INDIA'S FISHING INDUSTRY, AND SEEMED RESPONSIVE TO SUGGESTIONS FOR

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PAGE 01 BANGKO 09054 02 OF 02 041309Z

45

ACTION DLOS-07

INFO OCT-01 ISO-00 AF-10 ARA-16 EA-11 EUR-25 NEA-14 RSC-01

IO-14 COA-02 EB-11 OIC-04 CIAE-00 DODE-00 PM-07 H-03

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R 040911Z JUN 74  
FM AMEMBASSY BANGKOK  
TO SECSTATE WASHDC 3856  
INFO AMEMBASSY MANILA  
AMEMBASSY NEW DELHI  
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C O N F I D E N T I A L SECTION 2 OF 2 BANGKOK 9054

A PROVISION ON JOINT VENTURES. BUT ARTICLES MUST DESCRIBE COASTAL STATE RIGHTS AS EXCLUSIVE OWNERSHIP OF FISH IF THERE IS TO BE AGREEMENT. HE SEEMED SYMPATHETIC WITH U.S. POSITION ON ANADROMOUS AND HIGHLY MIGRATORY SPECIES, BUT NOTED THAT INDIA'S POSITION WAS DEVELOPED ON LOCAL VICE GLOBAL CONSIDERATIONS AND WAS AWARE OF JAPANESE PROBLEMS WITH U.S. SALMON POSITION. COMMODORE FRAZER PRIVATELY INDICATED THAT INDIA HAS 300 TRAWLERS ON ORDER. ONE HUNDRED ARE ORDERED FROM POLAND AND MEXICO, AND 200 TO BE CONSTRUCTED IN INDIA BECAUSE SUCH RATIO IS REQUIRED BY THE GOVERNMENT.

7. RESEARCH. FRAZER SAID GOI STRONG IN INSISTANCE FOR CONSENT REGIME FOR SCIENTIFIC RESEARCH BECAUSE OF MANY BAD EXPERIENCES WITH RESEARCH ORGANIZATIONS (NOT J.S.) AND THREAT TO SECURITY. IN ONE CASE IT TOOK ALMOST NINE YEARS TO OBTAIN PROMISED RAW DATA. CONSENT REGIME WOULD PERMIT FUTURE DENIAL TO THOSE NOT ADHERING TO OBLIGATIONS.. TEAM ADVOCACY OF COMPULSORY DISPUTE CONFIDENTIAL

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PAGE 02 BANGKO 09054 02 OF 02 041309Z

SETTLEMENT INEFFECTIVE AS CDS NOT VIEWED FAVORABLY BY GOI (SEE BELOW). OTHER ASPECTS OF USG RESEARCH POSITION VIEWED FAVORABLY, EXCEPT INDIA WANTS IT CLEAR THAT COASTAL STATE IS OWNER OF DATA AND SAMPLES.

8. COMPULSORY DISPUTE SETTLEMENT. COMPULSORY DISPUTE SETTLEMENT OPPOSED BY JAGOTA. INDIA HAS HAD CONSIDERABLE SUCCESS IN RESOLVING DISPUTES PROMPTLY THROUGH BILATERAL NEGOTIATIONS, BUT NEGOTIATION BECOMES MORE DIFFICULT IF EITHER PARTY THREATENS COMPULSORY ADJUDICATION. ICJ PROCEEDINGS ARE LONG, COMPLEX, AND INVOLVE JURISDICTIONAL ISSUES. JAGOTA DOES NOT BELIEVE IT POSSIBLE TO DESIGN EFFICIENT TRIBUNAL SYSTEM. INDIA MUST DECIDE IF ISSUE IS POLITICAL OR TECHNICAL.

9. VESSEL-SOURCE POLLUTION. GOI "COMPROMISE" POLLUTION POSITION SIMILAR TO CANADA, WITH ADVOCACY OF RESIDUAL STANDARD-SETTING COMPETENCE "WHERE THERE ARE NO STANDARDS" AND ENFORCEMENT POWER THROUGHOUT ECONOMIC ZONE IN COASTAL STATE. (JAGOTA DID NOT REFER TO OTHER ASPECTS OF CANADIAN POSITION, I.E., "WHERE STANDARDS ARE INADEQUATE.") JAGOTA AT APPARENT LOSS TO RESPOND TO TEAM ARGUMENTS AS TO CONSTRUCTION STANDARD PROBLEM, AND AT ONE POINT MUTTERED THAT MAYBE CONSTRUCTION COULD BE COMPLETELY

INTERNATIONAL, BUT WAS STRONG IN SUPPORT OF COASTAL STATE ENFORCEMENT JURISDICTION. DURING DISCUSSION OF ENFORCEMENT OF CONSTRUCTION STANDARDS, HE DISTINGUISHED BETWEEN DISCOVERY OF CONSTRUCTION VIOLATION IN CONTEXT OF POLLUTION (E.G., ACCIDENT OR ILLEGAL DISCHARGE), AND ROUTINE INSPECTION OF SHIPS ON HIGH SEAS, ALTHOUGH HE SEEMED TO FAVOR FLAG STATE CERTIFICATE OF COMPLIANCE OR "SPOT CHECKS." TEAM LEARNED THAT GOI HAS ON ORDER AN ADDITIONAL 200 MILLION DWT OF COMMERCIAL VESSELS, MOSTLY BULK CARRIERS FOR MANGANESE ORE, WHICH WILL DOUBLE SIZE OF MERCHANT FLEET. WHEN TEAM POINTED OUT PROSPECTIVE STULTIFYING EFFECTS ON INDIAN MERCHANT FLEET OF POSITION BEING ADVOCATED, JAGOTA ASSERTED NEED TO HAVE FAITH IN FELLOW MAN IN SOME CASES. (NOTE: COMMODORE FRAZER PRIVATELY INDICATED THAT THIS WAS FIRST OCCASION HE HAD REALIZED FULL SCOPE OF JAGOTA'S PROPOSAL, AND GAVE APPEARANCE OF BEING DISTURBED BY IT.)

10. DEEP SEABEDS. IN RELATION TO DEEP SEABEDS REGIME, JAGOTA EXPRESSED UNDERSTANDING OF USG CONCERN THAT ITS COMPANIES NOT BE EXCLUDED FROM OR DISCRIMINATED AGAINST ON DEEP SEABEDS, BUT CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BANGKO 09054 02 OF 02 041309Z

DESCRIBED THIS AS PURELY NATIONALISTIC APPROACH AND SAID THAT U.S. MUST UNDERSTAND HOW OTHER STATES WOULD VIEW SITUATION IN WHICH ONLY U.S. COMPANIES WERE EXPLOITING. WHEN WE MADE ARGUMENT THAT DEEP SEABED RESOURCES COULD NOT BE USED AS A POLITICAL WEAPON AGAINST ANY STATE, HE SAID "YOU'RE NOT THE ONLY ONES WHO FEEL THIS WAY; WE AGREE." HE VIEWS REVENUE FROM LICENSES AS INADEQUATE TO FULFILL COMMON HERITAGE EXPECTATIONS, AND REPEATED SUPPORT FOR DIRECT EXPLOITATION, BUT WITH POWER TO ISSUE LICENSES AS WELL. AT THE SAME TIME, REFERRING TO ANALYSIS IN STEVENSON-OXMAN ARTICLE, WITH WHICH HE AGREED, HE VOLUNTEERED THAT IF THERE ARE DETAILED RULES AND REGULATIONS (INDIA THINKS THERE SHOULD BE) THEN THE DIFFERENCES BETWEEN A LICENSE AND A CONTRACT MAY BE LARGELY SEMANTIC; HE ARGUED THAT A "CONTRACT" IS BETTER SECURITY THAN A "LICENSE," SINCE THE WORD "LICENSE" IMPLIES A POWER TO REVOKE.

11. LANDLOCKED STATES. IN PRESENCE OF SECRETARY TRIVEDI, JAGOTA SAID INDIA SUPPORTED FREE ACCESS TO THE SEA FOR LANDLOCKED STATES; THE PROBLEMS ARE BEING CAUSED BY PAKISTAN AND STATES IN OTHER REGIONS. HE ADDED THAT IRAN WILL ULTIMATELY FOLLOW INDIA'S LEAD ON THE ACCESS TO THE SEA QUESTION.

12. PROCEDURE. JAGOTA INDICATED SYMPATHY WITH THAT ASPECT OF U.S. VOTING PROPOSAL DESIGNED TO PREVENT ADOPTION OF TEXTS WITH "TOO MANY ABSTENTIONS." HE SUGGESTED NORMAL VOTING PROCEDURES, BUT COUPLED WITH ADDITIONAL REQUIREMENTS THAT A TEXT MUST RECEIVE A MAJORITY OF THOSE PRESENT AT THE TIME OF THE VOTE. THUS, IN PLENARY, IF 100 STATES WERE PRESENT, A TEXT THAT RECEIVED A TWO-THIRDS VOTE WOULD NOT BE ADOPTED UNLESS AT LEAST 51 POSITIVE

VOTES WERE CAST.

13. SUBSEQUENT CONSULTATIONS. AS SUGGESTED, WE INDICATED THAT AMBASSADOR STEVENSON AND PROFESSOR MOORE WOULD LIKE TO CONSULT WITH JAGOTA ON SUBSTANTIVE ISSUES EARLY AT CARACAS.

14. RECOMMENDATIONS.

A. CONTIGUOUS ZONE AND SMUGGLING PROBLEM. RECOMMEND CONTIGUOUS ZONE AND SMUGGLING PROBLEM BE REVIEWED IN LIGHT JAGOTA'S COMMENTS WITH A VIEW TO FINDING ACCEPTABLE SOLUTION IN THE EVENT IT DOES BECOME A COMPLICATING FACTOR ON BREADTH OF TERRITORIAL SEA ISSUE.  
CONFIDENTIAL

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PAGE 04 BANGKO 09054 02 OF 02 041309Z

WE BELIEVE INDIA IS SERIOUS, THAT THIS IS NOT MERELY JAGOTA SPEAKING, AND THAT IT WOULD BE UNWISE TO DISCOUNT HIS REMARKS.

B. STRAITS. RECOMMEND JAGOTA'S SUGGESTIONS REGARDING "PEACETIME REGIME" BE STUDIED. THERE IS LEGISLATIVE HISTORY ON THIS MATTER WITH RESPECT TO EXISTING LOS CONVENTIONS; OBVIOUSLY THEY DO NOT DEAL WITH RIGHTS AND DUTIES OF BELLIGERENTS AND NEUTRALS. IT APPEARS THAT UNDERLYING ISSUE JAGOTA ADDRESSED RELATES TO SITUATION WHERE STRAITS STATE IS A BELLIGERENT RATHER THAN TO SITUATION WHERE STRAITS STATE IS A NEUTRAL.  
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## Message Attributes

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